

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JEANNA B. JOHNSON,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

C.A. No: _____

NOTICE OF REMOVAL

Defendant Monsanto Company (“Monsanto”), by filing this Notice of Removal and related papers, removes this lawsuit from the Superior Court of the State of Delaware, New Castle County, to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

Introduction

In this products liability lawsuit, plaintiff Jeanna B. Johnson sues Monsanto Company (“Monsanto”) for injuries allegedly caused by Monsanto’s Roundup[®]-branded herbicides, which have glyphosate as their active ingredient. Farmers have used glyphosate-based herbicides for decades to increase crop yields. Glyphosate is one of the most thoroughly studied herbicides in the world, and glyphosate-based herbicides have received regulatory approval in more than 160 countries. Since 1974, when Monsanto first introduced a Roundup[®]-branded herbicide to the marketplace, the United States Environmental Protection Agency repeatedly has concluded that glyphosate does not cause cancer. Nevertheless, plaintiff alleges here that she developed cancer – specifically, non-Hodgkin’s lymphoma (“NHL”) – caused by exposure to Roundup[®]-branded herbicides. Numerous federal lawsuits filed by other plaintiffs alleging that they developed NHL due to exposure to Roundup[®]-branded herbicides have been transferred for coordinated

multidistrict litigation (“MDL”) proceedings to Judge Vince Chhabria in the Northern District of California. *See In re Roundup Prods. Liab. Litig.*, No. 3:16-md-02741-VC (N.D. Cal.).

As discussed in more detail below, Monsanto removes this lawsuit because this Court has subject matter jurisdiction based on diversity of citizenship. Monsanto is a citizen of Missouri (which is where its principal place of business is located) and Delaware (Monsanto’s state of incorporation). Plaintiff is a citizen of the State of Utah. Accordingly, complete diversity of citizenship exists in this case as required by 28 U.S.C. § 1332. The statutory amount-in-controversy requirement is also satisfied because plaintiff seeks damages for cancer (NHL) allegedly caused by exposure to Monsanto’s Roundup[®]-branded herbicides.

Basis For Removal

In support of removal, Monsanto states:

1. Plaintiff commenced this action in the Superior Court of the State of Delaware, New Castle County, on or about December 22, 2017, by filing a Complaint, captioned *Jeanna B. Johnson v. Monsanto Company*, Case No. N17C-12-297 VLM (the “State Court Action”). A copy of the Complaint and any other papers filed in the State Court Action are attached collectively as Exhibit A.

2. Plaintiff seeks damages for NHL allegedly caused by exposure to Monsanto’s Roundup[®]-branded herbicides. Compl. ¶¶ 10, 14-19.

3. The Superior Court of the State of Delaware, New Castle County, is located within the District of Delaware. Therefore, removal to this Court satisfies the venue requirements of 28 U.S.C. § 1446(a).

4. Plaintiff is a citizen of the State of Utah, residing in the City of Roosevelt, County of Duchesne, Utah. Compl. ¶ 14.

5. Monsanto is, and has been at all relevant times, a corporation incorporated under the laws of the State of Delaware with its principal place of business in the State of Missouri. Thus, Monsanto is a citizen of Missouri and Delaware.

6. The Complaint seeks compensatory and punitive damages, together with court costs, attorneys' fees, and all such other relief as the Court deems proper. *See* Compl., "Prayer for Relief." Given that plaintiff alleges that Monsanto's Roundup[®]-branded herbicides caused her to develop cancer (NHL), it is plausible from the face of the Complaint that she seeks damages in excess of \$75,000, exclusive of interest and costs, which satisfies the jurisdictional amount-in-controversy requirement. 28 U.S.C. § 1332(a); *see Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014) ("[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold."). In fact, other lawsuits seeking damages for NHL allegedly caused by Roundup[®]-branded herbicides have been filed against Monsanto in other federal courts asserting jurisdiction under § 1332(a). As discussed above, those cases have been transferred to the Northern District of California for coordinated MDL proceedings. *See In re Roundup Prods. Liab. Litig.*, No. 3:16-md-02741-VC (N.D. Cal.).

7. In sum, this Court has original subject matter jurisdiction over this action based on § 1332(a) because there is complete diversity of citizenship between all parties (plaintiff and Monsanto) and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. Monsanto has not been served with the Complaint in the State Court Action. Accordingly, this Notice of Removal is timely pursuant to 28 U.S.C § 1446(b).

9. Because Monsanto has not been served, the forum defendant rule of 28 U.S.C § 1441(b)(2) does not apply here, and this case is removable under 28 U.S.C. § 1441(a). *See*

Munchel v. Wyeth LLC, Civil Action No. 12-906-LPS, 2012 WL 4050072 (D. Del. Sept. 11, 2012); *Hutchins v. Bayer Corp.*, C.A. No. 08-cv-640-JJF-LPS, 2009 WL 192468 (D. Del. Jan. 23, 2009); *see also Saratoga Advantage Trust Tech. & Commc'ns Portfolio v. Marvell Tech. Grp., Ltd.*, Case No. 15-cv-04881-RMW, 2015 WL 9269166, at *2 (N.D. Cal. Dec. 21, 2015); *Davis v. Hoffman-LaRoche, Inc.*, Case No. 13-5051 JSC, 2014 WL 12647769, at *2 (N.D. Cal. Jan. 14, 2014) (citing cases); *Regal Stone Ltd. v. Longs Drug Stores Cal. L.L.C.*, 881 F. Supp. 2d 1123, 1127-28 (N.D. Cal. 2012).

10. The relevant facts and procedural posture of this case are identical to those in *Munchel* and *Hutchins*. Diversity jurisdiction exists based upon the citizenship of the parties and the amount in controversy, and lack of service of process on Monsanto renders § 1441(b)(2) inapplicable:

The language of § 1441(b) is plain and unambiguous. It provides that a case in which there is diversity jurisdiction “shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” Here, there is diversity jurisdiction and “none of the parties in interest properly joined and served as defendants is a citizen of” Delaware, “the State in which [this] action” has been brought. Accordingly, this action “shall be removable” and the motion to remand should be denied.

Hutchins, 2009 WL 192468, at *11 (quoting 28 U.S.C. § 1441(b)(2)).

11. For the reasons set forth above, this lawsuit is properly removed to this Court.

12. A copy of the written notice required by 28 U.S.C. § 1446(d) is attached as Exhibit B. It will be promptly filed in the Superior Court of the State of Delaware, New Castle County, and promptly served on plaintiff.

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Dated: December 22, 2017

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CERTIFICATE OF SERVICE

I certify that on this 22nd day of December 2017, I electronically filed the foregoing Notice of Removal with the Clerk of the Court by using the CM/ECF system. I further certify that a true and correct copy of the Notice of Removal was caused to be served upon the following counsel via electronic mail:

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